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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,670	09/09/2003	Nancy Tulgren	3135.02US01	2183
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PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100				
			EXAMINER VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/658,670	Applicant(s) TULGREN ET AL.	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claim 3 of the support leg being received in the non-terminal aperture must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 6 is objected to because of the following informalities:

Claim 6, line 2, "fabricate" should be --fabric--

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 indicates that support legs are received in non-terminal apertures. However, the specification Fig.1 indicates that element #66 is the non-terminal aperture, but shows that the support legs are not received in these apertures. Instead the support legs are received in joint members. It is not clear to the examiner what applicant is intending to claim and if there is sufficient support for it in the specification. For examination purpose, the examiner has taken the confusing limitation to mean that the support legs are received in the Double Tee joint non-terminal apertures as illustrated in applicant's Figs 1 and 2. Clarification is requested.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6-9, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,992,348 to Harding.

Regarding Claim 1, Harding teaches a modular pet furniture comprising a frame structure comprising a plurality of vertical support members (Harding Fig.1 #70, 72, 74, 76), each vertical support member having an insertion end, a plurality of horizontal support members (Harding Fig. 1 #12, 14, 16, 18) each of the horizontal support members having an insertion end; at least one of the horizontal support member having a non-terminal aperture (Harding Fig. 5 #12'', Fig. 6 #18'', Fig. 7 #14'', Fig. 8 #16''), and a plurality of joint members (Harding Fig. 1 #46, 48, 50, 52) for interconnecting the vertical support members and the horizontal support members to form an array, the joint members accommodating the insertion ends of the vertical support members and horizontal support members therewithin; and a pet support structure comprising a pet support surface (Harding Fig. 1 #28) and an attachment mechanism (Harding Fig. 3 #30, 32, 34, 36 and Figs. 5, 6, 8 #38, 44, 40, 42) operably attached thereto, wherein the attachment mechanism is removably attached to at least one of the vertical support members or the horizontal support members for maintaining the pet support surface in a position with respect to the frame structure.

Regarding Claim 4, Harding teaches the pet support surface is removably attached to the attachment means (Harding Fig. 4 is removably attached to Fig. 3 #38)

Regarding Claim 6, Harding teaches the pet support surface is fabricated from fabricate or plastic (Harding Col. 4 line 31)

Regarding Claim 7, Harding teaches the vertical support members and horizontal support members are secured to the joint members with by set-screw fittings (Harding Fig. 9 #100).

Regarding Claim 8, Harding teaches the vertical support members, horizontal support members, the joint members are fabricated from plastic (Harding Col. 3 line 40).

Regarding Claim 9, Harding teaches the attachment mechanism allows the pet support structure to be selectively positioned with respect to the frame structure (Harding Fig. 3 is selectively positioned within the horizontal members).

Regarding Claim 13, Harding teaches attaching a bed structure to at least one horizontal support member (Harding #28) and fastening a pet support to the bed structure (Harding #38)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent No. Des. 294,752 to Palier.

Regarding Claims 5 and 15, Harding is silent on a pet enclosure/platform mounted with respect to the pet support surface to at least partially enclose the pet support surface. However, Palier teaches a pet furniture frame with a pet enclosure/platform mounted with respect to the pet support surface at least partially

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enclosing the pet support surface (Palier Fig. 1). It would have been obvious to one of ordinary skill in the art to modify the teachings of Harding with the teachings of Palier at the time of the invention to protect the animal from direct sunlight, to protect the animal from rain, and provide shade to keep the animal cooler when used outdoors. (examiner takes platform to be a "raised area" and the top of the enclosure taught by Palier is a raised area).

Claims 2, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent No. 5,577,465 to Cook

Regarding Claim 2, Harding teaches a pet support frame structure and pet support structure, but is silent on the attachment mechanism comprises a support frame having an outer perimeter, wherein the pet support surface is operably attached to the support frame; and a plurality of support legs extending from the support frame. However, Cook teaches a frame structure (Cook Fig. 1 bottom vertical and horizontal members #12) and a pet support structure (Cook Fig. 1 #52) and that the attachment mechanism comprises a support frame having an outer perimeter, wherein the pet support surface is operably attached to the support frame; and a plurality of support legs extending from the support frame (Cook Fig. 1 top vertical and horizontal members #12). It would have been obvious to one of ordinary skill in the art to modify the teachings of Harding with the teachings of Cook at the time of the invention to provide a pet climbing surface as taught by Cook.

Regarding Claims 10 and 11, Harding is silent on a plurality of pet support surfaces removably attached to an array of support regions. However, Cook teaches that the support members and joints can be connected in an array of many different configurations and plurality of regions (Cook Fig. 1 and abstract last sentence). It would have been obvious to one of ordinary skill in the art to modify the teachings of Harding with the teachings of Cook at the time of the invention since the modification is merely the duplication of known members to create a multiple effect as taught by Cook to accommodate multiple animals at one time.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view U.S. Patent No. 5,709,164 to Batterton.

Regarding Claim 14, Harding is silent on attaching fabric to at least one of the horizontal cross members to form a scratch pad. However, Batterton teaches a modular pet furniture with an attachment fabric to function as a scratch pad (Batterton Col.1 line 45). It would have been obvious to one of ordinary skill in the art to modify the teachings of Harding with the teachings of Batterton at the time of the invention to encourage the cat to scratch the play surface in order to discourage scratching of human furniture as taught by Batterton (Batterton abstract).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent No. 5,577,465 to Cook as applied to claim 10 above, and further in view of U.S. Patent No. 5,709,164 to Batterton.



Regarding Claim 12, Harding as modified is silent on attaching fabric to form a scratch pad. However, Batterton teaches a modular pet furniture with an attachment fabric to function as a scratch pad (Batterton Col.1 line 45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Harding with the teachings of Batterton at the time of the invention to encourage the cat to scratch the play surface in order to discourage scratching of human furniture as taught by Batterton (Batterton abstract).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,992,348 to Harding in view of U.S. Patent No. 5,577,465 to Cook as applied to claims 1 and 2 above, and further in view of PVC Furniture, Weekend Workshop Collection, by Edward A. Baldwin, 1992, 7 pages.

Regarding Claim 3, Harding is silent on explicitly teaching a non-terminal aperture receives one of the support legs. However, PVC furniture teaches that it is old and notoriously well-known in the art of PVC furniture making to configure joints, vertical supports, horizontal supports in an array of configurations including stacked structures. PVC Furniture teaches the common use of different non-terminal joints (e.g. page x Double Tee joint). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Harding with the general knowledge taught by PVC Furniture at the time of the invention by provide a non-terminal apertures that receives a support leg since the modification is merely the shifting location of a known aperture feature to accommodated stacking for compact storage.

***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.


Applicant has not clearly patentably distinguished the relationship between the frame structure and the pet support structure.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

05 April 2006